

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN JUDE,

Plaintiff,

-against-

VIRGINIA MORROW, COMMISSIONER
HEARING OFFICER FOR THE NEW YORK
STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION, *et al.*,

Defendants.

22-CV-10560 (CS)

ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

Plaintiff, who is currently incarcerated at Five Points Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983 and 28 U.S.C. § 1337. Plaintiff asserts that while confined at Sullivan Correction Facility, Defendants subjected him to excessive force, harassment, and retaliation, and violated his right to due process. By order dated January 10, 2023, the court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

DISCUSSION

A. Service on the Identified Defendants

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6

¹ Prisoners are not exempt from paying the full filing fee, even when they have been granted permission to proceed IFP. See 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

(2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants Virginia Morrow,³ Commissioner Hearing Officer for the New York State Department of Corrections and Community Supervision (DOCCS); Sullivan County Correctional Facility Sergeant Courtney E. Ferris; Sullivan Correction Correctional Facility Officers Christopher J. Kinne, Damian Cruz, George Gilmore, Jr., George Gilmore, Sr., Adam Houser, Timothy D. Fitzpatrick, John H. Kratz, and Paul Holland through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon each defendants.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

³ Although Plaintiff sued “Jane” Morrow in this case, he named her in another case that is pending in this district, and her first name is Virginia. *Jude v. N.Y.S. Office of Mental Health*, ECF 7:22-CV-7441 (NSR). The Court directs the Clerk of Court to correct the docket in this case to reflect her correct first name. *See* Fed. R. Civ. P. 21.

B. Unidentified Defendant

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff may supply sufficient information to permit DOCCS to identify Defendant John Doe, a Sullivan County Correctional Facility officer whom Plaintiff seeks to sue. It is therefore ordered that the New York State Attorney General, who is the attorney for and agent of DOCCS, must ascertain the identity of the John Doe and the address where this defendant may be served. The New York State Attorney General must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint providing the full name and service address of the John Doe. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 form with the address for the newly named defendant and deliver all documents necessary to effect service to the U.S. Marshals Service.

C. Local Rule 33.2

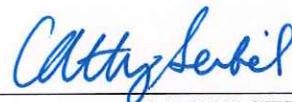
Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court's website under "Forms" and are titled "Plaintiff's Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents." Within 120 days of

service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.⁴

CONCLUSION

The Clerk of Court is instructed to: (1) issue summonses for Defendants Virginia Morrow; Sullivan County Correctional Facility Sergeant Courtney E. Ferris; Sullivan County Correctional Facility Officers Christopher J. Kinne, Damian Cruz, George Gilmore, Jr., George Gilmore, Sr., Adam Houser, Timothy D. Fitzpatrick, John H. Kratz, and Paul Holland, and complete the USM-285 forms with the addresses for these defendants, and deliver to the U.S. Marshals Service all documents necessary to effect service; (2) mail a copy of this order and the complaint to the New York State Attorney General at: 28 Liberty Street, New York, New York 10005; (3) mail an information package to Plaintiff; and (4) change the first name of Defendant Morrow from Jane to Virginia under Fed. R. Civ. P. 21. An amended complaint form is attached to this order.

Dated: 1/31/23
White Plains, New York



CATHY SEIBEL
United States District Judge

⁴ If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

DEFENDANTS AND SERVICE ADDRESSES

1. Virginia Morrow,
New York State Department of Corrections and Community Supervision
Office of Counsel
The Harriman State Campus, Building 4
1220 Washington Avenue
Albany, New York 12226
2. Sergeant Courtney E. Ferris
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
3. Officer Christopher Kinne
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
4. Officer Damian Cruz
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
Officer Paul Holland
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
5. Officer John H. Kratz
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
6. Officer George Gilmore, Sr.
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
7. Officer George Gilmore, Jr.
Sullivan Correctional Facility
325 Riverside Drive

P.O. Box 116
Fallsburg, New York 12733-011

8. Officer Adam Hauser
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
9. Officer Timothy D. Fitzpatrick
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011
10. Officer Paul Holland
Sullivan Correctional Facility
325 Riverside Drive
P.O. Box 116
Fallsburg, New York 12733-011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV

(Include case number if one has been assigned)

-against-

**AMENDED
COMPLAINT
(Prisoner)**

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		

Current Work Address

County, City	State	Zip Code
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Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		

Current Work Address

County, City	State	Zip Code
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Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		

Current Work Address

County, City	State	Zip Code
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Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		

Current Work Address

County, City	State	Zip Code
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V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Prison Address		
County, City	State	Zip Code
Date on which I am delivering this complaint to prison authorities for mailing:		